



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/622,409

07/18/2003

Angela Temple

14892-004001

4188

26231

7590

05/31/2006

FISH & RICHARDSON P.C.

P.O. BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,409

Applicant(s)

TEMPLE ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006 and 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 9, 2006 (Amdt. B) has been entered.

Acknowledgement of Applicant's Amendments

2. The amendment made in claim 1 in the Amendment filed on May 9, 2006 (Amdt. B) has been received and considered by Examiner.

Claim Rejections - 35 USC § 102

3. Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (U.S. Patent No. 5,280,661).

Brown teaches a wipe (wipe device, item 10, Fig. 1 and 7) that comprises material (the material of either sheath 14 or 16) forming only one cavity with one opening configured to receive a finger (col. 2, lines 40-48 and Fig. 1, 7 and 8): the material of sheath 14 forms only one cavity with one opening configured to receive a finger, and the material of sheath 16 forms only one cavity with one opening configured to receive a finger (Fig. 1, 7 and 8). The material of the wipe device of Brown is shaped, with a finger inserted therein, to fit in a region of an eye near its tear duct because the tip of a finger is shaped to fit in a region of an eye near its tear duct, and the tip of either end of the wipe device of Brown is shaped similarly to the tip of a finger (see Fig. 7 and 8), so the tip of either end of the wipe device of Brown is shaped to fit in a region of an eye

Art Unit: 1772

near its tear duct. Since the material is a component of the wipe device of Brown, the material is adapted to remove biological matter released from the eye at a position at or near the tear duct. Note that has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. *In re Hutchinson*, 69 USPQ 138.

In regard to claim 2, the material includes a first material (material for sheaths 14, 16) and a second material (wiping sheet, item 26) coupled together to form an elongated cavity (col. 2, lines 40-48 and Fig. 1, 7 and 8). In regard to claim 3, Brown teaches that the cavity is substantially tubular with the opening at one end and tapering at the other end (Fig. 2, 7 and 8). In regard to claim 4, non-fibrous material falls within the teaching of Brown at col. 2, lines 43-46. In regard to claim 5, the material (material of either sheath 14 or 16) is a unitary piece of material (Fig. 1, 7 and 8). In regard to claim 6, the material is operable to absorb moisture because Brown teaches cloth, leather and synthetic fabric (materials that are operable to absorb moisture) as suitable materials for the material (col. 2, lines 40-48). In regard to claim 7, the material of Brown (the material of either sheath 14 or 16) has a rectangular shape and an oval shape: the material other than at the tip has a rectangular shape, and the tip of the material has an oval shape (Fig. 7). In regard to claim 9, an eye irritant solution is substantially absent from the material (the material for either sheath 14 or 16, or the material of wiping sheet, item 26).

Claim Rejections - 35 USC § 103

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 5,280,661).

Brown teaches the wipe as discussed above in regard to claim 1. While Brown fails to explicitly teach that the material (the material of either sheath 14 or 16) has a maximum dimension of less than about two inches, Brown teaches that the wipe is for lenses and similar articles (col. 1, lines 14-16 and col. 2, lines 28-30) and Fig. 7 of Brown depicts the wipe being used on a pair of eyeglasses. Since Brown teaches that the wipe is to be used for wiping the lenses of eyeglasses, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the sheaths, items 14 and 16, of Brown such that they are sized such that they have a maximum dimension that is approximately equal to the maximum dimension of the lens that the wipe is intended to be used on, as is shown in Fig. 7 of Brown, in order to make efficient use of the material required for the sheaths, items 14 and 16, of Brown, depending on the particular lens which is to be wiped by the wipe of Brown.

5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 5,280,661) and in further view of Wilkman (U.S. Patent No. 6,305,531).

Brown teaches the wipe as discussed above in regard to claim 1.

In regard to claim 10, Brown fails to explicitly teach that the material (the material of either sheath 14 or 16) is at least partially saturated with a non-eye irritating solution. Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as a cleaning fluid, a baby wipe or an eye makeup remover (col. 1, lines 10-13 and 27-33 and col. 4, lines 9-11 and 19-22). Since Brown teaches a wipe for wiping eyeglass lenses, and since Wilkman discloses the use of wipes as a baby wipe and as an eye makeup remover, both of which are necessarily non-eye irritating, and both of which contain cleaning solutions, one of ordinary skill in the art would have recognized to have included a non-eye irritating cleaning

Art Unit: 1772

solution in the material of either sheath 14 or 16 of Brown such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially saturated the material of either sheath 14 or 16 of Brown with a non-eye irritating cleaning solution) as taught by Wilkman, in order to more effectively clean the lenses via use of the cleaning solution in the wipe while also preventing eye irritation via use of a non-eye irritating cleaning solution.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a non-eye irritating cleaning solution in the material of either sheath 14 or 16 of Brown such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially saturated the material of either sheath 14 or 16 of Brown with a non-eye irritating cleaning solution) as taught by Wilkman, in order to more effectively clean the lenses via use of the cleaning solution in the wipe while also preventing eye irritation via use of a non-eye irritating cleaning solution.

In regard to claim 11, Brown fails to explicitly teach that the material (the material of either sheath 14 or 16) is at least partially saturated with a solution operable to remove makeup. Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as an eye makeup remover for removing eye makeup (col. 1, lines 10-13 and 27-33 and col. 4, lines 15-22). Since Brown teaches a wipe for wiping eyeglass lenses, one of ordinary skill in the art would have recognized to have included an eye makeup remover in the material of either sheath 14 or 16 of Brown (therefore to have at least partially saturated the material of either sheath 14 or 16 of Brown with an eye makeup remover) in order to more effectively remove eye makeup from the lenses via use of the eye makeup remover in the wipe of Brown as taught by Wilkman.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included an eye makeup remover in the material of either sheath 14 or 16 of Brown (therefore to have at least partially saturated the material of either sheath 14 or 16 of Brown with an eye makeup remover) in order to more effectively remove eye makeup from the lenses via use of the eye makeup remover in the wipe of Brown as taught by Wilkman.

Response to Arguments

6. Applicant's arguments presented on page 5 of Amdt. B regarding the 35 U.S.C. 102 rejection of claim 1 have been fully considered but are not persuasive. Applicant argues that Brown does not teach material forming only one cavity with one opening configured to receive a finger, but claim 1 recites a wipe comprising material forming only one cavity with one opening configured to receive a finger: the wipe of Brown comprises, for example, the material of sheath 14, which forms only one cavity with one opening configured to receive a finger (Fig. 1, 7 and 8).

7. Applicant's arguments presented on page 6 of Amdt. B regarding the 35 U.S.C. 103 rejections of claims 8, 10 and 11 have been fully considered but are not persuasive. Applicant's arguments depend entirely on Applicant's arguments regarding the 35 U.S.C. 102 rejection of claim 1 which have been addressed above in this Office Action.

8. Applicant addresses the 35 U.S.C. 103 rejection of claim 16 on page 6 of Amdt. B, but claim 16 is cancelled.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-

Art Unit: 1772

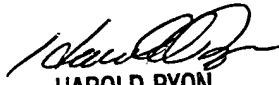
1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh
05/26/06

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 5/30/06